

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

June 11, 1998

DIVISION ONE

B110957 People (Not for Publication)

V.
Taylor

The judgment is affirmed.

Ortega, Acting P.J.

We concur: Masterson, J.
Dunn, J. (Assigned)

B106344 Lindsey (Not for Publication)

v.
Hettena

The judgment is affirmed.

Ortega, J.

We concur: Spencer, P.J.
 Masterson, J.

B115514 People (Not for Publication)

V.
Rodriguez

The judgment is affirmed.

Ortega, J.

We concur: Spencer, P.J.
Masterson, J.

June 11, 1998-Continued

DIVISION ONE (Continued)

B112566 Farell (Not for Publication)
v.
Acosta

We affirm the summary judgment and award defendant costs on appeal.

Ortega, J.

We concur: Spencer, P.J.
Dunn, J. (Assigned)

B102375 Wade (Not for Publication)
v.
Wade

We affirm the judgment. The parties are to bear their own costs.

Ortega, Acting P.J.

We concur: Masterson, J.
Dunn, J. (Assigned)

B112846 People (Not for Publication)
v.
Apodaca

The judgment is affirmed.

Ortega, Acting P.J.

We concur: Masterson, J.
Dunn, J. (Assigned)

DIVISION TWO

B113239 Shirilla (Not for Publication)
v.
Lipson

The orders of April 22 and June 2, 1997, awarding respondent postjudgment attorney fees and denying LaBrie's claim of exemption, respectively, are reversed. The earnings withholding order is terminated and respondent is directed to promptly restore to LaBrie any and all sums collected pursuant to the earnings withholding order. Appellants are entitled to their costs on appeal.

Fukuto, Acting P.J.

We concur: Nott, J.
Zebrowski, J.

B116236 Los Angeles County, D.C.S. (Not for Publication)
v.
Linda D.

The judgment is affirmed.

Fukuto, Acting P.J.

We concur: Nott, J.
Zebrowski, J.

B102937 Carrillo (Certified for Partial Publication)
v.
ACF Industries, Inc.

The judgment and the order denying judgment notwithstanding the verdict are affirmed.

Fukuto, J.

We concur: Boren, P.J.
Zebrowski, J.

June 11, 1998-Continued

DIVISION TWO (Continued)

[illegible]

The order denying appellant's claim for attorney fees is reversed and the cause is remanded to the trial court for further proceedings to determine the appropriate amount of attorney fees to be awarded for appellant's activities in the trial court and on appeal. Appellant shall recover her costs on appeal.

Fukuto, J.

We concur: Boren, P.J.
Zebrowski, J.

B114257 People (Not for Publication)
v.
Breen

The judgment is modified to provide that appellant shall serve only two five-year enhancements pursuant to section 667, subdivision (a), thereby reducing his total sentence to 36 years to life in state prison. As so modified the judgment is affirmed.

Fukuto, J.

We concur: Boren, P.J.
 Zebrowski, J.

DIVISION TWO (Continued)

B111561 People (Not for Publication)
v.
Smith

The Court:

The judgment is reversed, and the matter is remanded for the trial court to hold a hearing to determine whether the prosecutor and the trial court have sufficient memory of the voir dire proceedings, after review of the reporter's transcript of those proceedings and any available notes, to permit a new hearing on appellant's third motion under *People v. Wheeler* (1978) 22 Cal.3d 258 at which the prosecutor can state her reasons for her challenges to Prospective Juror No. 0254 and Prospective Juror No. 9806 and the trial court can make a sincere and reasoned evaluation of those reasons. If such a new hearing is possible, the trial court shall conduct the new hearing in a manner consistent with the views expressed in this opinion. If the prosecutor or the trial court does not have sufficient recall of the voir dire proceedings to hold the new hearing on the motion or if, after conducting the new hearing, the court finds that the prosecutor exercised a peremptory challenge against either prospective juror solely on the grounds of presumed group bias, the court shall grant appellant a new trial. However, if the court determines after a new hearing on appellant's motion that the prosecutor challenged each of the two prospective jurors in question for a racially neutral reason, the judgment of conviction and sentence shall be reinstated.

Fukuto, Acting P.J., Nott, J., Zebrowski, J.

B111159 People (Not for Publication)
v.
Bell & Randle

The Court:

The judgments are affirmed.

Fukuto, Acting P.J., Nott, J., Zebrowski, J.

DIVISION THREE

B107985 John R. Ramos (Not for Publication)
v.
Robert David Merrick

The order is affirmed. The clerk is directed to forward a copy of our opinion to the State Bar for its evaluation of the professional conduct involved. (*In re Marriage of Wagoner* (1986) 176 Cal.App.3d 936, 943; 1 Witkin, Cal. Procedure (4th ed. 1996) Attorneys, § 620, p.731.)

Aldrich, J.

We concur: Klein, P.J.
Goodman, J. (Assigned)

DIVISION FOUR

B109188 Drain Certified for Partial Publication
v.
Betz Laboratories, Inc., et al.

Filed order granting petition for rehearing. Respondents shall have until June 26, 1998, to file a formal response to the petition with regard to said issues and appellant shall have until July 10, 1998, to file a reply. Upon receipt by the court of said briefing, the court will deem the matter submitted unless, in the opinion of the court, oral argument will assist the court in reaching determination in which event counsel shall be notified of a hearing date.

DIVISION FIVE

B103341 County of San Bernardino, et al. (Not for Publication)
v.
State Department of Health Services, et al.

The judgment is reversed and the matter remanded to the trial court for further proceedings consistent with this opinion. Each party to bear its own costs.

Godoy Perez, J.

We concur: Turner, P.J.
Armstrong, J.

June 11, 1998-Continued

DIVISION FIVE (Continued)

[illegible]

The judgment is modified by reducing the restitution fine from \$20,000 to \$10,000. The abstract of judgment is modified to reflect a \$10,000 restitution fine in section 5, "other orders." As modified, the judgment is affirmed.

Grignon, J.

We concur: Turner, P.J.
 Armstrong, J.

B114082 People (Not for Publication)
v.
Franchot Johnson

The judgment is affirmed.

Godoy Perez, J.

We concur: Grignon, Acting P.J.
Armstrong, J.

B113263 Stephen R. Glasser (Certified for Publication)
v.
Edward Glasser

The appeal is dismissed.

Godoy Perez, J.

We concur: Turner, P.J.
 Grignon, J.

DIVISION FIVE (Continued)

B111267 People (Certified for Partial Publication)
v.
Basil Sinclair

The order directing that the firearm use sentence run concurrently is reversed. The four year firearm use term is ordered to run consecutively to the second degree murder sentence. An amended abstract of judgment is to be prepared by the superior court clerk and forwarded to the Department of Corrections. In all other respects, the judgment affirmed.

Turner, P.J.

We concur: Grignon, J.
Armstrong, J.

B114008 People (Not for Publication)
v.
Marco Lopez-Leal

The judgment is affirmed.

Grignon, J.

We concur: Turner, P.J.
Armstrong, J.

B115177 People (Not for Publication)
v.
Michael James Krauss

The judgment is affirmed.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

June 11, 1998-Continued

DIVISION FIVE (Continued)

B112146 People (Not for Publication)

V.

Garvin Robinson

The judgment is affirmed.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

B110955 People (Not for Publication)

V.

Derek Kevin Walton

The judgment is affirmed.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

B121095 In re Daniel K., et al., minors (Not for Publication)

Desiree U.

V.

Superior Court of Los Angeles County

Los Angeles County Department of Children and Family Services

The petition for extraordinary writ is denied.

Grignon, J.

We concur: Turner, P.J.
Godoy Perez, J.

June 11, 1998-Continued

DIVISION FIVE (Continued)

B119046 People (Not for Publication)
v.
Gerardo Romo

The judgment is affirmed.

Grignon, J.

We concur: Turner, P.J.
 Armstrong, J.

B112889 Ram Sareen (Not for Publication)
v.
James Kline

The judgment is affirmed. Respondent James Kline, D.D.S. is awarded his costs on appeal.

Grignon, J.

We concur: Turner, P.J.
Godoy Perez, J.

B110426 People
v.
Larry Venorrise Bradley

Filed order modifying opinion. (No change in the judgment.)

B113559 Marvin Cobb
v.
University of Southern California et al.

Filed order denying petition for rehearing.

DIVISION SIX

Court convened at 9:00 A.M.

Present: Stone, P.J., Gilbert, J., Yegan, J., Coffee, J., and G. Bents, Deputy Clerk.

B116040 Wilburn
 v.
 Price

Merits:

Argued by Mark M. O'Brien for appellant and by Edwin S. Clark for respondent. Cause submitted.

B116426 Mariscal
 v.
 Santa Barbara County

Merits:

Argued by Dan Mariscal, appellant appearing in propria persona. Argument previously waived by respondent. Cause submitted.

B118152 Donohue
 v.
 Santa Paula Mobile Home Rent Review Commission

Merits:

Argued by Richard A. Weinstock for appellants; by Phillip H. Romney, City Attorney, for respondents City of Santa Paula, et al. and by Thomas E. Gibbs for respondents Santa Paula West, et al. Cause submitted.

B118168 Harris
 v.
 The Oaks Shopping Center

Merits:

Argued by James G. Allen for appellant and by John M. Coleman for respondents. Cause submitted.

DIVISION SIX (Continued)

Court recessed at 10:10 A.M.

Court reconvened at 10:20 A.M.

Present: Stone, P.J., Gilbert, J., Yegan, J., Coffee, J., and G. Bents, Deputy Clerk.

B117235 Serbick
 v.
 Boehm Enterprises

Merits:

Argued by Alan D. Negron for appellant and by Wayne Avrashow for respondent. Cause submitted.

B112020 Bethancourt
 v.
 Los Angeles Unified School District

Merits:

Appellant's counsel failed to appear. Argued by Gary A. Bacio for respondent. Cause submitted.

B117626 Manfredi & Levine
 v.
 Ventura County Superior Court
 (Barles, et al., r.p.i.)

OSC:

Presented by Diane L. Karpman for petitioner and by Kevin H. Louth for real parties in interest Gary and Julie Podolny. Cause submitted.

Court recessed at 11:00 A.M.

Court reconvened at 1:30 P.M.

Present: Stone, P.J., Gilbert, J., Yegan, J., Coffee, J., and G. Bents, Deputy Clerk.

DIVISION SIX (Continued)

Each of the following:

B111684 People v. Highhouse
B111864 People v. Contreras
B114055 People v. Sliwo
B114821 People v. Swesey
B115401 People v. Gamez
B115701 People v. Maddens
B115763 People v. Madrigal
B116695 People v. Hemming
B117715 People v. Chiprin

Argument waived, cause submitted.

B112064 People
 v.
 Powers

Merits:

Argued by Douglas G. Benedon for appellant and by Ana R. Duarte, Deputy Attorney General, via video conference for respondent. Cause submitted.

B116810 People
 v.
 De La Torre

Merits:

Argued by Jerry D. Whatley for appellant and by Gary A. Lieberman, Deputy Attorney General, via video conference for respondent. Cause submitted.

DIVISION SIX (Continued)

B112343 People
 v.
 Green

Merits:

Argued by Janet Vining Mitchell for appellant and by Lori M. Gong, Deputy Attorney General, via video conference for respondent. Cause submitted.

B115403 People
 v.
 Moynihan

Merits:

Argued by Esther R. Sorkin for appellant and by David Andrew Eldridge, Deputy Attorney General, via video conference for respondent. Cause submitted.

B110432 People
 v.
 Hubbard

Merits:

Argued by Leonard J. Klaif for appellant and by Marc J. Nolan, Deputy Attorney General, via video conference for respondent. Cause submitted.

Yegan, J. left the bench at 2:20 P.M.

B110101 People
 v.
 Royster

Merits:

Argued by Dan Mrotek for appellant and by Deborah Bigbee Sturrock, Deputy Attorney General, via video conference for respondent. Cause submitted.

Court adjourned at 2:30 P.M.

DIVISION SEVEN

Court convened at 9:00 A.M.

Present: Lillie, P.J., Johnson, J., Woods, J., Neal, J., and Emma Jean Amos, Deputy Clerk.

Each of the following:

B105405 People v. Murphy
B108822 People v. Love
B109974 People v. Ramos
B110682 People v. Murphy
B111134 People v. Brewer
B112016 People v. McCardell
B112699 People v. Joyner
B112719 People v. Blaine
B112828 People v. Tancioco
B112939 People v. Espinoza
B113209 People v. Ruiz
B113350 People v. Adkins
B113563 People v. Daniels
B113836 People v. Bautista
B113879 People v. Cota
B114604 People v. Johnson
B115559 People v. Wilson
B116336 People v. Arleen C.
B116644 People v. Rubalcava
B117412 People v. William L.
B119632 Teresa P. v. D.C.F.S.
B120338 DAnielle S. v. D.C.F.S.
B120502 Dorian B. v. D.C.F.S.

Argument waived, cause submitted.

DIVISION SEVEN (Continued)

B115825 People
 v.
 Roselinsky

Merits:
Argued by John Guenther for appellant and by Arthur Auerbach, deputy attorney general, for respondent. Cause submitted.

B106152 People
 v.
 Truzian

Merits:
Argued by Mark D. Greenberg for appellant and by Kent Bullard, deputy attorney general, for respondent. Cause submitted.

B111499 People
 v.
 Gonzalez

Merits:
Argued by Jerald W. Newton for appellant and by Donald J. Oeser, deputy attorney general, for respondent. Cause submitted.

B114508 People
 v.
 Lewis

Merits:
Argued by Richard Siref for appellant and by Gary Lieberman, deputy attorney general, for respondent. Cause submitted.

DIVISION SEVEN (Continued)

B107904 People
 v.
 Moore

Merits:

Argued by Jill D. Lansing for appellant and by David Eldridge, deputy attorney general, for respondent. Cause submitted.

B109763 People
 v.
 Perez

Merits:

Argued by Phillip I. Bronson for appellant and by April Sylvester, deputy attorney general, for respondent. Cause submitted.

B104884 People
 v.
 Galaz, Acuna and Uribe

Merits:

Argued by George Schraer for appellant Galaz and by Marc J. Nolan, deputy attorney general, for respondent. Appellants Acuna and Uribe having waived oral argument. Cause submitted.

B102796 People
 v.
 McBride

Merits:

Argued by Joan T. Anyon for appellant and by David C. Cook, deputy attorney general, for respondent. Cause submitted.

DIVISION SEVEN (Continued)

B107487 People
 v.
 Bennett and Odom

Merits:
Argued by Philip M. Brooks for appellant and by Stephen M. Kaufman, deputy attorney general, for respondent and appellant Odom having waived oral argument. Cause submitted.

B101012 People
 v.
 Manning

Merits:
Argued by Edi M.O. Faal for appellant and by Victoria Bedrossian, deputy attorney general, for respondent. Cause submitted.

B111053 People
 v.
 Newman

Oral argument continued to July 9, 1998, at 9:00 a.m.

B108559 People
 v.
 Shaw

Oral argument continued to July 9, 1998, at 9:00 a.m.

B117662 Dept. of Children & Family Services
 v.
 Manuel P.

Argument waived, cause submitted.

DIVISION SEVEN (Continued)

B113859 County of Los Angeles
v.
Russell R.

Argument waived, cause submitted.

B118555 Walls
v.
W.C.A.B.

Oral argument continued to July 9, 1998, at 10:00 a.m.

B108843 People
v.
Fugawa

Oral argument is continued to July 9, 1998.

B112501 Belton
v.
Bower's Ambulance Service

Appearance:

Rebecca Smith for respondent and waiving argument and there being no appearance by appellant. Cause submitted.

B117003 Wong
v.
State Farm Insurance

Merits:

Argued by Lewis Wong, in propria persona and by William R. Lowe for respondent. Cause submitted.

DIVISION SEVEN (Continued)

B116619 Dept. of Children & Family Services
 v.
 Lucille H.

Argument waived, cause submitted.

B114161 City of Los Angeles
 v.
 Amwest Surety Ins. Company

Merits:

Argued by Stanley Haren for appellant and by Valentin Dinu, deputy city attorney, for respondent. Cause submitted.

Court recessed at 12:01 p.m.

The Court reconvened at 2:00 p.m.

Present: Lillie, P.J., Johnson, J., Woods, J., Neal, J., and Emma Jean Amos, Deputy Clerk.

B112274 PBA, LLC
 v.
 KPOD, LIMITED

Merits:

Argued by Clifford W. Roberts for appellant and by Ken Steelman for respondent. Cause submitted.

B106577 Wong
 v.
 Wong

Merits:

Argued by Geraldine G. Ly for appellant and by Daniel Y.L. Wu for respondent. Cause submitted.

DIVISION SEVEN (Continued)

B110219 Keesee
 v.
 Container Stevedoring Company

Merits:

Argued by Erich P. Wise for appellant and by William Clough for respondent. Cause submitted.

B116157 People
 v.
 Thomas

Matter ordered off calendar.

B107511 Dobrin
 v.
 Dearborn Insurance

Merits:

Argued by Hal Chase for appellant and by Charles A. Bird for respondent. Cause submitted.

B106278 Fenton
 v.
 Centinela Hospital

Merits:

Argued by Robert Gerstein for appellants and by Christine Hoeffner and Brian P. Barrow for respondents. Cause submitted.

Court adjourned at 3:20 p.m.